WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED
Committee Substitute for
SENATE BILL NO. 191

(By Senator Ross, cit mt)

PASSED March 12, 1998
In Effect NINETY DAYS FROM PASSAGE
AN ACT to repeal section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article; and to amend and reenact section thirty-one, article six, chapter thirty-three of said code, all relating to repealing the requirement that accident reports be confidential; revising accident reporting requirements; revising accident report forms; revising reporting requirements for garages; and revising reporting requirements to the commissioner of motor vehicles under certain motor vehicle insurance policies.
Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article be amended and reenacted; and that section thirty-one, article six, chapter thirty-three of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 4. ACCIDENTS.

§17C-4-1. Accidents involving death or personal injuries.

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section three of this article. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

(c) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of the person so convicted for a period of one year.

§17C-4-3. Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address and the registration...
number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

§17C-4-5. Duty upon striking fixtures upon a highway.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license and shall make report of such accident when and as required in section seven of this article.

§17C-4-6. Immediate reports of accidents.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of two hundred fifty dollars or more shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the West Virginia state police.

§17C-4-7. Written reports of accidents.

Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle accident occurring on the public highways of this state resulting in
bodily injury to or death of any person or total property
damage to an apparent extent of two hundred fifty dollars
or more shall, either at the time of and at the scene of the
accident or thereafter by interviewing participants or
witnesses shall, within twenty-four hours after completing
such investigation, forward a written report of such
accident to the division. The division shall prepare a form
for such accident report and, after approval of such form
by the commissioner, the superintendent of the West
Virginia state police and the commissioner of highways,
shall supply copies of such form to police departments,
sheriffs and other appropriate law-enforcement agencies.
Every accident report required under the provisions of this
section shall be made on such form.

§17C-4-8. When driver unable to report.

Whenever the driver of a vehicle is physically incapable
of making an immediate report of an accident as required
in section six of this article and there was another occu-
pant in the vehicle at the time of the accident capable of
making a report, such occupant shall make or cause to be
made said report not made by the driver.

§17C-4-9. Accident report forms.

(a) The division shall prepare and upon request supply
to police departments, coroners, sheriffs, division of
natural resources, and other suitable agencies or individu-
als, forms for accident reports required hereunder, appro-
priate with respect to the persons required to make such
reports and the purposes to be served. The written reports
to be made by investigating officers shall call for suffi-
ciently detailed information to disclose with reference to
a traffic accident the cause, conditions then existing, and
the persons and vehicles involved.

(b) Every accident report required to be made in writing
shall be made on the appropriate form approved by the
division and shall contain all of the information required
(c) Every such report shall also contain information sufficient to enable the commissioner to determine whether the requirements for security upon motor vehicles is in effect in accordance with chapter seventeen-d of this code.

§17C-4-10. Penalty for failure to report.

1. The commissioner may suspend the license or permit to drive and any nonresident operating privileges of any person failing to report an accident as herein provided under section six of this article until such report has been filed. Any person convicted of failing to make a report as required herein shall be punished as provided in section one, article eighteen of this chapter.

§17C-4-12. Garages to report bullet damage.

1. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the local law-enforcement agency within twenty-four hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

§17C-4-15. Any incorporated city, town, etc., may require accident reports.

1. Any incorporated city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall file with a designated city department a report of such accident. All such reports shall be for the confidential use of the city department.

§17C-4-16. Accidents involving state and municipal property; reports to be provided.

1. Whenever a report of a motor vehicle accident prepared by a member of the West Virginia state police, conserva-
tion officer of the division of natural resources, a member
of a county sheriff's department or a municipal police
officer, in the regular course of their duties, indicates that
as a result of such accident damage has occurred to any
bridge, sign, guardrail or other property, exclusive of
licensed motor vehicles, a copy of such report shall, in the
case of such property belonging to the division of high-
ways, be provided to the commissioner of the division of
highways, and, in the case of such property belonging to
a municipality, be provided to the mayor of that munici-
pality. The copies of such reports shall be provided to the
commissioner or mayor, as applicable, without cost to
them.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and
underinsured motorists' coverage; conditions for
recovery under endorsement; rights and liabili-
ties of insurer.

(a) No policy or contract of bodily injury liability
insurance, or of property damage liability insurance,
covering liability arising from the ownership, maintenance
or use of any motor vehicle, shall be issued or delivered in
this state to the owner of such vehicle, or shall be issued or
delivered by any insurer licensed in this state upon any
motor vehicle for which a certificate of title has been
issued by the division of motor vehicles of this state,
unless it shall contain a provision insuring the named
insured and any other person, except a bailee for hire and
any persons specifically excluded by any restrictive
endorsement attached to the policy, responsible for the use
of or using the motor vehicle with the consent, expressed
or implied, of the named insured or his or her spouse
against liability for death or bodily injury sustained or
loss or damage occasioned within the coverage of the
policy or contract as a result of negligence in the operation
or use of such vehicle by the named insured or by such
person: Provided, That in any such automobile liability
insurance policy or contract, or endorsement thereto, if
coverage resulting from the use of a nonowned automobile
is conditioned upon the consent of the owner of such
motor vehicle, the word "owner" shall be construed to
include the custodian of such nonowned motor vehicles.
Notwithstanding any other provision of this code, if the
owner of a policy receives a notice of cancellation pursuant
to article six-a of this chapter and the reason for the
cancellation is a violation of law by a person insured
under the policy, said owner may by restrictive endorse-
ment specifically exclude the person who violated the law
and the restrictive endorsement shall be effective in
regard to the total liability coverage provided under the
policy, including coverage provided pursuant to the
mandatory liability requirements of section two, article
four, chapter seventeen-d of this code, but nothing in such
restrictive endorsement shall be construed to abrogate the
“family purpose doctrine”.

(b) Nor shall any such policy or contract be so issued or
delivered unless it shall contain an endorsement or
provisions undertaking to pay the insured all sums which
he shall be legally entitled to recover as damages from the
owner or operator of an uninsured motor vehicle, within
limits which shall be no less than the requirements of
section two, article four, chapter seventeen-d of this code,
as amended from time to time: Provided, That such policy
or contract shall provide an option to the insured with
appropriately adjusted premiums to pay the insured all
sums which he shall be legally entitled to recover as
damages from the owner or operator of an uninsured
motor vehicle up to an amount of one hundred thousand
dollars because of bodily injury to or death of one person
in any one accident and, subject to said limit for one
person, in the amount of three hundred thousand dollars
because of bodily injury to or death of two or more
persons in any one accident and in the amount of fifty thousand dollars because of injury to or destruction of property of others in any one accident: Provided, however, that such endorsement or provisions may exclude the first three hundred dollars of property damage resulting from the negligence of an uninsured motorist: Provided further, that such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall legally be entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without setoff against the insured's policy or any other policy. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage shall be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an insured. “Underinsured motor vehicle” means a motor vehicle with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident, but the limits of that insurance are either: (i) Less than limits the insured carried for underinsured motorists’ coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists’ coverage. No sums payable as a result of underinsured motorists’ coverage shall be reduced by payments made under the insured’s policy or any other policy.

(c) As used in this section, the term “bodily injury” shall
include death resulting therefrom and the term "named insured" shall mean the person named as such in the declarations of the policy or contract and shall also include such person's spouse if a resident of the same household and the term "insured" shall mean the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" shall mean a motor vehicle as to which there is no: (i) Bodily injury liability insurance and property damage liability insurance both in the amounts specified by section two, article four, chapter seventeen-d of this code, as amended from time to time; or (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder; or (iii) there is no certificate of self-insurance issued in accordance with the provisions of said section. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured or underinsured motor vehicle or in its own name.
Nothing in this subsection shall prevent such owner or operator from employing counsel of his or her own choice and taking any action in his or her own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his or her behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his or her behalf, shall report the accident to a police, peace or to a judicial officer, unless the accident shall already have been investigated by a police officer;

(ii) Notify the insurance company, within sixty days after such accident, that the insured or his or her legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement, shall make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an
action may be instituted against the unknown defendant as "John Doe", in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of process may be made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in which the action is brought, and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or provisions required by subsection (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death or damage to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of, becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe. Any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company shall have paid the insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expenses incurred in connection therewith, including reasonable attorney's fees. Nothing in an endorsement or provision made under this subsection, nor any other provision of law, shall operate to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.
(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under any such endorsement or provision, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer to his or her employees under any workers' compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible, in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section shall not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein shall prevent any insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

(l) The insurance commissioner shall review on an
annual basis the rate structure for uninsured and
underinsured motorists' coverage as set forth in subsection (b) of this section and shall report to the Legislature
on said rate structure on or before the fifteenth day of
January, one thousand nine hundred eighty-three, and on
or before the fifteenth day of January of each of the next
two succeeding years.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee.

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 6th day of April, 1998.

Governor